

TYRELLE M. BENNETT,)
)
 Plaintiff,)
)
 v.) Civil Action No. 04-192-SLR
)
 THOMAS CARROLL, LARRY SAVAGE,)
 and BERNARD WILLIAMS,)
)
 Defendants.)

Plaintiff Tyrelle M. Bennett is a pro se litigant who is presently incarcerated at the Delaware Correctional Center ("DCC") located in Smyrna, Delaware. His SBI number is 427674. He filed this action pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331. Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two step process. First, the court must determine whether the plaintiff is eligible for pauper status. On April 19, 2004, the court granted plaintiff leave to proceed in forma pauperis, assessed \$9.43 as an initial partial filing fee and ordered plaintiff to file an authorization form within thirty

days. Plaintiff filed the authorization form on May 10, 2004.

Once the pauper determination is made, the court must then determine whether the action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief pursuant to 28 U.S.C. §§ 1915(e)(2)(B) - 1915A(b)(1).¹ If the court finds the plaintiff's complaint falls under any one of the exclusions listed in the statutes, then the court must dismiss the complaint.

When reviewing complaints pursuant to 28 U.S.C. §§ 1915(e)(2)(B) - 1915A(b)(1), the court must apply the Fed. R. Civ. P. 12(b)(6) standard of review. See Neal v. Pennsylvania Bd. of Prob. & Parole, No. 96-7923, 1997 WL 338838 (E.D. Pa. June 19, 1997) (applying Rule 12(b)(6) standard as appropriate standard for dismissing claim under § 1915A). Accordingly, the court must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996). Pro se complaints are

¹ These two statutes work in conjunction. Section 1915(e)(2)(B) authorizes the court to dismiss an in forma pauperis complaint at any time, if the court finds the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief. Section 1915A(a) requires the court to screen prisoner in forma pauperis complaints seeking redress from governmental entities, officers or employees before docketing, if feasible and to dismiss those complaints falling under the categories listed in § 1915A (b)(1).

held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

The standard for determining whether an action is frivolous is well established. The Supreme Court has explained that a complaint is frivolous "where it lacks an arguable basis either in law or fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).² As discussed below, plaintiff's claim has no arguable basis in law or fact. Therefore, his complaint shall be dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B) - 1915A(b)(1).

II. DISCUSSION

A. The Complaint

Plaintiff has filed this complaint against the following defendants: Thomas Carroll ("Carroll"), Bernard Williams ("Williams"), and Larry Savage ("Savage"). Plaintiff alleges that on October 23, 2003, there was a fight "on D tier in Bldg 23." (D.I. 2 at 3) Plaintiff further alleges that, as a result

² Neitzke applied § 1915(d) prior to the enactment of the Prisoner Litigation Reform Act of 1995 (PLRA). Section 1915 (e)(2)(B) is the re-designation of the former § 1915(d) under the PLRA. Therefore, cases addressing the meaning of frivolousness under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 14-134, 110 Stat. 1321 (April 26, 1996).

of the fight, he was escorted off the tier and placed in segregation. (Id.) Plaintiff also alleges that he served fifteen (15) days in solitary confinement. (Id.) It is unclear from the complaint when plaintiff served the fifteen days of solitary confinement. (Id.) Nonetheless, plaintiff alleges that he did not receive a hearing prior to being placed in solitary confinement, or prior to being reclassified to the Security Housing Unit ("SHU"). (Id.) Plaintiff also alleges that he filed grievances with Carroll, Savage and Williams, but never received a reply. (Id. at 3-4)

Plaintiff requests compensatory damages from each defendant in the amount of \$100 per day, for every day he has been classified to the SHU. Plaintiff also requests punitive damages from each defendant in the amount of \$1,000 per day, for each day he has been classified to the SHU. (Id. at 4)

B. Analysis

Analysis of plaintiff's due process claim begins with determining whether a constitutionally protected liberty interest exists. Sandin v. Connor, 515 U.S. 472 (1995); Hewitt v. Helms, 459 U.S. 460 (1983). "Liberty interests protected by the Fourteenth Amendment may arise from two sources -- the Due Process Clause itself and the laws of the States." Hewitt v. Helms, 459 U.S. at 466.

The Supreme Court has explained that liberty interests

protected by the Due Process Clause are limited to "freedom from restraint" which imposes "atypical and significant hardship in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. at 483-84. In determining whether an inmate has suffered an "atypical and significant hardship" as a result of his confinement under Sandin, the court must consider two factors: "1) the amount of time the prisoner was placed into disciplinary segregation, and 2) whether the conditions of his confinement in disciplinary segregation were significantly more restrictive than those imposed on other inmates in solitary confinement." Shoats v. Horn, 213 F.3d 140, 144 (3d Cir. 2000) (citing Sandin, 515 U.S. at 486). "Given the considerations that lead to transfers to administrative custody of inmates at risk from others, inmates at risk from themselves and inmates deemed to be security risks, etc., one can conclude with confidence that stays of many months are not uncommon." Griffin v. Vaughn, 112 F.3d 703, 708 (3d Cir. 1997).

Plaintiff was transferred to the SHU because DCC officials determined that he had taken part in a fight on October 23, 2003. (D.I. 2 at 3) It appears that plaintiff remained in the SHU at least until May 2004. (Id. at 7) Plaintiff's 15 days in solitary confinement and his reclassification to the SHU were not conditions "significantly more restrictive than those imposed" on other inmates in the SHU. Shoats, 213 F.3d at 144. Therefore,

the court concludes that plaintiff's 15 days in solitary confinement and his reclassification to the SHU were "within the normal limits or range of custody [his] conviction authorizes the State to impose." Meachum v. Fano, 427 U.S. 215, 225 (1976).

Plaintiff also argues that the Constitution and state law afford him a liberty interest in his classification to the general population. This court has repeatedly determined that the Department of Correction statutes and regulations do not provide prisoners with liberty or property interests protected by the Due Process Clause. Jackson v. Brewington-Carr, No. 97-270, 1999 U.S. Dist. LEXIS 535 (D. Del. Jan. 15, 1999) (holding that statutes and regulations governing Delaware prison system do not provide inmates with liberty interest in remaining free from administrative segregation or from a particular classification); Carrigan v. State of Delaware, 957 F.Supp. 1376 (D. Del. 1997) (holding that prisoner has no constitutionally protected interest in a particular classification); Abdul-Akbar v. Dept. of Correction, 910 F.Supp. 986 (D. Del. 1995) (holding that inmates have no "legitimate entitlement" to employment or rehabilitation). Plaintiff's claim that Carrol, Savage and Williams have violated his right to due process has no arguable basis in law or in fact. Therefore, plaintiff's Fourteenth Amendment due process claim against Carroll, Savage, and Williams is frivolous and shall be dismissed pursuant to 28 U.S.C. §§

1915(e)(2)(B) - 1915A(b)(1).

NOW THEREFORE, IT IS HEREBY ORDERED this 7th day of
September 2004, that:

1. Plaintiff's complaint is dismissed as frivolous pursuant
to 28 U.S.C. §§ 1915(e)(2)(B) - 1915A(b)(1).

2. Plaintiff is not required to pay any remaining balance
of the \$150.00 filing fee.

3. The Clerk shall mail a copy of the Court's Order to the
plaintiff.

Sue L. Robinson
United States District Judge